

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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VALLIER WILLIAM TOMPKINS,

Petitioner,

v.

WARDEN BACA, *et al.*,

Respondents.

Case No. 3:16-cv-00444-MMD-WGC

ORDER

In this habeas corpus action, brought by Nevada prisoner Vallier William Tompkins, the Court granted Tompkins' motion for appointment of counsel and appointed the Federal Public Defender for the District of Nevada (FPD) to represent Tompkins. See Order entered July 27, 2016 (ECF No. 3). The FPD appeared on behalf of Tompkins on September 19, 2016 (ECF No. 11). Also, counsel appeared on behalf of the respondents on July 29, 2016 (ECF No. 6).

Therefore, the Court will set a schedule for further proceedings in this action, as follows.

Amended Petition. If necessary, petitioner will file and serve an amended petition for writ of habeas corpus within ninety (90) days after entry of this order. The amended petition must specifically state whether each ground for relief has been exhausted in state court; for each claim that has been exhausted in state court, the amended petition must state how, when, and where that occurred. If petitioner determines that an amended petition need not be filed, then, within ninety (90) days after entry of this order, petitioner must file and serve a notice to that effect.

1 *Response to Petition.* Respondents shall have sixty (60) days following service of
2 the amended petition to file and serve an answer or other response to the amended
3 petition. If petitioner does not file an amended petition, respondents will have sixty (60)
4 days following the due date for the amended petition to file and serve an answer or
5 other response to petitioner's petition.

6 *Reply.* Petitioner will have forty-five (45) days following service of an answer to
7 file and serve a reply. Respondents will thereafter have thirty (30) days following service
8 of a reply to file and serve a response to the reply.

9 *Briefing of Motion to Dismiss.* If respondents file a motion to dismiss, petitioner
10 shall have sixty (60) days following service of the motion to file and serve a response to
11 the motion. Respondents will thereafter have thirty (30) days following service of the
12 response to file and serve a reply.


13 *Discovery.* If petitioner wishes to move for leave to conduct discovery, petitioner
14 must file and serve such motion concurrently with, but separate from, the response to
15 respondents' motion to dismiss or the reply to respondents' answer. Any motion for
16 leave to conduct discovery filed by petitioner before that time may be considered
17 premature, and may be denied, without prejudice, on that basis. Respondents will file
18 and serve a response to any such motion concurrently with, but separate from, their
19 reply in support of their motion to dismiss or their response to petitioner's reply.
20 Thereafter, petitioner will have twenty (20) days to file and serve a reply in support of
21 the motion for leave to conduct discovery.

22 *Evidentiary Hearing.* If petitioner wishes to request an evidentiary hearing,
23 petitioner must file and serve a motion for an evidentiary hearing concurrently with, but
24 separate from, the response to respondents' motion to dismiss or the reply to
25 respondents' answer. Any motion for an evidentiary hearing filed by petitioner before
26 that time may be considered premature, and may be denied, without prejudice, on that
27 basis. The motion for an evidentiary hearing must specifically address why an
28 evidentiary hearing is required, and must meet the requirements of 28 U.S.C. § 2254(e).

1 The motion must state whether an evidentiary hearing was held in state court, and, if so,
2 state where the transcript is located in the record. If petitioner files a motion for an
3 evidentiary hearing, respondents must file and serve a response to that motion
4 concurrently with, but separate from, their reply in support of their motion to dismiss or
5 their response to petitioner's reply. Thereafter, petitioner will have twenty (20) days to
6 file and serve a reply in support of the motion for an evidentiary hearing.

7 It is so ordered.

8 DATED THIS 20th day of September 2016.

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12 MIRANDA M. DU
13 UNITED STATES DISTRICT JUDGE
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